

**REMARKS**

The Office Action objects to claim 2 as being of improper dependent form. Applicants have cancelled claim 2.

The Office Action rejects claims 6, 13, 19, 25, 33, and 39 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Claims 25, 33, and 39 have been cancelled. Applicants have added further details with respect to the tuner for claims 6, 13, and 19, i.e. similar to language of claim 1, which was acceptable to the Examiner. Thus, claims 6, 13, and 19 are believed to meet the requirements of 35 U.S.C. 112, second paragraph.

The Office Action rejects claims 1, 4, 6-11, 13-17, 19-23, and 25-31 under 35 U.S.C. 103 as being unpatentable over US patent publication 2002/0088333 (Skubic) in view of US patent 4365537 (Pogoda). Applicants have cancelled claims 25-31.

Applicants have amended claim 1 to more clearly distinguish over the prior art references. Claim 1, as amended, recites a tuning device for a musical instrument comprising a tuner having a programmable stroboscopic light source adapted for tuning a musical instrument. A control button on the tuner programs a state of the stroboscopic light source. A utility device is integrated with the tuner. The utility device has a secondary function applicable only to uses which are independent of any activity associated with the musical instrument.

The Skubic reference discloses an electronic tuner for musical instruments. Progoda discloses that the electronic tuner can have a guitar pick. However, neither Skubic nor Progoda teach or suggest a utility device integrated with the

tuner which has a secondary function applicable only to uses which are independent of any activity associated with the musical instrument. As stated in the specification, an important feature of the utility device is that it has utility separate and apart from the musical instrument, see paragraphs 23 and 32. The separate utility increases the probability that the musician will have the tuner available when needed because he or she is likely carrying the utility device with integrated tuner anyway. For example, the musician may not have remembered to bring a strobe tuner along to a playing session, but he or she likely brought his or her keys. By having the strobe tuner integrated with a utility device having a secondary function which has no relationship to the musical instrument, it is likely that the musician will have the tuner when needed because he or she will more likely be carrying the utility device. The pick in Progoda has a utility directly associated with the musical instrument, i.e. strumming the strings. Thus, the guitar pick is expressly excluded from the coverage of claim 1.

While claim 1 has not been rejected based on the Farley non-patent literature provided on IDS, Applicants would take this opportunity to comment on the reference. The Farley reference was provided by IDS to make the USPTO aware of its existence, in accordance with Applicants' obligation under 37 C.F.R. 1.56. However, Applicants do not believe the Farley reference qualifies as prior art with respect to the present invention. The Farley reference was printed from an Internet website, but there was no date associated with the product. Applicants have been unable to determine any effective date of the Farley product. Therefore, absence a determination of the

effective date of the Farley reference, any rejection based on the Farley reference is believed to be improper.

Moreover, while claim 1 has not been rejected based on US patent publication 2004/0139841 (Capano), Applicants would take this opportunity to comment on the reference. The Capano reference uses a wrist tuner for tuning musical instruments. The user places the wrist tuner on his or her wrist. The wrist tuner in Capano picks up audio signals from the musical instrument and displays the received frequency, see FIG. 5. The musical tuner is housed in a wrist band for convenience. The user's hand is near the musical instrument, so the wrist tuner is also in the same proximity. The user does not need to hold the tuner while in use. However, Capano makes no mention of any secondary utility, e.g., time-keeping, unassociated with the musical instrument. Applicants submit that the wrist tuner in Capano is intended only for a musical instrument tuning function and not applicable only to uses which are independent of any activity associated with the musical instrument. In other words, the musician would probably not be wearing the wrist tuner but for the tuning activity. Therefore, the wrist tuner does not qualify as a utility device having a secondary function applicable only to uses which are independent of any activity associated with the musical instrument.

Accordingly, claim 1 is believed to patentably distinguish over the Skubic and Progoda references, taken singularly or in combination. Claims 3-5 are believed to be in condition for allowance as each is dependent from an allowable base claim.

As for claim 6, Applicants have amended the claim to more clearly distinguish over the prior art references. Claim 6, as amended, recites a musical instrument tuning device comprising a

tuner having a strobe light adapted for tuning a musical instrument. A utility device is integrated with the tuner. The utility device has a secondary function apart from any activity associated with the musical instrument.

The Skubic reference discloses an electronic tuner for musical instruments. Progoda discloses that the electronic tuner can have a guitar pick. However, neither Skubic nor Progoda teach or suggest a utility device integrated with the tuner which has a secondary function apart from any activity associated with the musical instrument. The pick in Progoda has a utility directly associated with the musical instrument, i.e. strumming the strings. Thus, the guitar pick is expressly excluded from the coverage of claim 6.

Accordingly, claim 6 is believed to patentably distinguish over the Skubic and Progoda references, taken singularly or in combination. Claims 8-12 are believed to be in condition for allowance as each is dependent from an allowable base claim.

As for claim 13, Applicants have amended the claim to more clearly distinguish over the prior art references. Claim 13, as amended, recites a tuning device for use with a musical instrument comprising a controllable strobe light for tuning the musical instrument. A utility device is integrated with the controllable strobe light. The utility device has a secondary function apart from any activity associated with the musical instrument.

The Skubic reference discloses an electronic tuner for musical instruments. Progoda discloses that the electronic tuner can have a guitar pick. However, neither Skubic nor Progoda teach or suggest a utility device integrated with the tuner which has a secondary function apart from any activity

associated with the musical instrument. The pick in Progoda has a utility directly associated with the musical instrument, i.e., strumming the strings. Thus, the guitar pick is expressly excluded from the coverage of claim 13.

Accordingly, claim 13 is believed to patentably distinguish over the Skubic and Progoda references, taken singularly or in combination. Claims 14-18 are believed to be in condition for allowance as each is dependent from an allowable base claim.

As for claim 19, Applicants have amended the claim to more clearly distinguish over the prior art references. Claim 19, as amended, recites a method of making a portable musical instrument tuner comprising the steps of providing a tuner having a strobe light source adapted for tuning a musical instrument, and providing a utility device integrated with the tuner. The utility device has a secondary function apart from any activity associated with the musical instrument.

The Skubic reference discloses an electronic tuner for musical instruments. Progoda discloses that the electronic tuner can have a guitar pick. However, neither Skubic nor Progoda teach or suggest a utility device integrated with the tuner which has a secondary function apart from any activity associated with the musical instrument. The pick in Progoda has a utility directly associated with the musical instrument, i.e., strumming the strings. Thus, the guitar pick is expressly excluded from the coverage of claim 19.

Accordingly, claim 19 is believed to patentably distinguish over the Skubic and Progoda references, taken singularly or in combination. Claims 21-24 are believed to be in condition for allowance as each is dependent from an allowable base claim.

The Office Action rejects claims 5, 12, 18, 24, and 32 under 35 U.S.C. 103 as being unpatentable over US patent publication 2002/0088333 (Skubic) in view of US patent 4365537 (Pogoda) and further in view of Capano and the Farley non-patent literature provided on IDS. Applicants believe the Farley reference is not prior art for the present invention as discussed above. The 103 rejection to dependent claims 5, 12, 18, and 24 is considered moot in view of the amendment to the respective base claims.

The Office Action rejects claims 33-38 under 35 U.S.C. 103 as being unpatentable over Skubic. Claims 33-38 have been cancelled.

The Office Action rejects claims 39-43 under 35 U.S.C. 103 as being unpatentable over Skubic in view of Capano and US patent 5768127 (Murata). Claims 39-43 have been cancelled.

Applicant(s) believe that all information and requirements for the application have been provided to the USPTO. If there are matters that can be discussed by telephone to further the prosecution of the Application, Applicant(s) invite the Examiner to call the undersigned attorney at the Examiner's convenience.

U.S. Application Serial No.: 10/802,893  
Charles C. Adams et al.  
Response to Office Action dated June 16, 2006

The Commissioner is hereby authorized to charge any fees due with this Response to U.S. PTO Account No. 17-0055.

Respectfully submitted,  
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